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Detroit Auto Auction, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO. Case 7-CA-39942

October 31, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on June 18, 1997, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on July 23, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 7-RC-20648. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On August 29, 1997, the General Counsel filed a Motion for Summary Judgment. On September 3, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding. In addition, the Respondent denies that the information requested is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.

We also find that there are no factual issues warranting a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent:

1. Current list of all bargaining unit employees (working, laid off, or on any type leave of absence), including their:
 - Names, addresses, phone numbers and social security numbers
 - Date of birth;
 - Date of hire;
 - Gender;
 - Classification;
 - Rate of Pay;
 - Classification Seniority, if any;
 - Current hours of work and/or shift.
2. The average total labor cost per hour, per employee, including all wages, overtime, vacation, holiday, shift premiums, bonuses, medical insurance, dental insurance, vision insurance, sickness and accident insurance, long-term disability insurance, life insurance, FICA, unemployment compensation, and any other costs you have. We would like this specifying the per hour cost of each item.
3. The total hours worked by all bargaining unit employees for each of the past three years.
4. Income statements for the last three (3) full years.
5. General and administrative expenses, including details on management salaries and benefits.
6. Operating plans, budgets, forecasts or other documents dealing with projected costs and operating results.
7. A list of all your competitors, including company name, address, and whether they are unionized. Also, any wage and benefit information you have on them.
8. A current list of all fringe benefits you are providing such as vacation, holiday, sick days, etc., and all insurance such as medical, life, AD&D, sickness and accident, vision, hearing, dental, etc., including an estimated cents per hour cost of each.
9. The following information relative to any pension plan:
 - a. Active pension plan participants categorized by age, seniority and credited service (vesting and benefit).
 - b. Retired participants categorized by date of retirement, age, credited service at retirement, amount and type of monthly benefit.

c. Annual company contributions to the pension plan with schedule of dates and level of contributions.

d. The three most recent actuarial evaluations.

e. The three latest Department of Labor 5500 forms, including Schedule B and SSA.

f. The three latest trustee reports. If the plan is carried by an insurance company, then the latest three annual reports from the insurance company.

g. A statement indicating any major changes in fund accounting procedures or assumptions which have occurred in the past three years.

h. A current employee handbook, including rules, regulations, penalties, etc.

10. A current employee handbook, including rules, regulations, penalties, etc.

11. A current company policy manual.

12. A list of all temporary and/or probationary workers currently employed by your company.

13. A detailed list of all work that is currently being subcontracted by any temporary service, and any work that may be subcontracted in the next 12 month period, including the name and address of whom the work is contracted to.

It is well established that, with the exception of the employees' social security numbers requested in paragraph 1, the financial information and the information on competitors requested in paragraphs 4-7, and the information regarding nonunit temporary employees and subcontracting requested in paragraphs 12 and 13, all of the foregoing information is presumptively relevant for purposes of collective bargaining and must be furnished on request.¹

Accordingly, we grant the General Counsel's Motion for Summary Judgment and will order the Respondent to bargain and to furnish the requested information with the exception of the information mentioned above in paragraphs 1, 4-7, 12 and 13. We deny summary judgment with respect to the information mentioned above in paragraphs 1, 4-7, 12 and 13.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Taylor, Michigan, has been engaged in the wholesale sale of used automobiles to dealers. During the year ending December 31, 1996, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$1 million and shipped goods valued

in excess of \$50,000 from its Taylor facilities directly to points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held August 11, 1995, the Union was certified on January 14, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time lot drivers, service truck drivers, condition report writers, check-in employees, sales lineup coordinators, detailers, car washers, buffers, cleaning persons, recon lot drivers, washer/dryer janitors, mechanics, metal technicians, paint technicians, bodyshop clerks, porters, parts clerks, trim technicians, pick-up and delivery drivers, fleet/lease condition report writers, fleet/lease lot drivers and crew chiefs employed by the Employer at or out of its facilities located at 20225 Eureka Road and 20911 Gladwin, Taylor, Michigan; but excluding all pick-up and delivery clerks, fleet/lease clerks, accounting management clerks, quality control employees, temporary employees, guards and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About January 21, 1997, the Union requested the Respondent to bargain and to furnish information and, since about the same date, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 21, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union,

¹ See *Dexter Fastener Technologies*, 321 NLRB 612 (1996), and cases cited therein.

and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union the information requested with the exception of employees' social security numbers, financial information, information on competitors, and information regarding nonunit temporary employees and subcontracting.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Detroit Auto Auction, Inc., Taylor, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time lot drivers, service truck drivers, condition report writers, check-in employees, sales lineup coordinators, detailers, car washers, buffers, cleaning persons, recon lot drivers, washer/dryer janitors, mechanics, metal technicians, paint technicians, bodyshop clerks, porters, parts clerks, trim technicians, pick-up and delivery drivers, fleet/lease condition report writers, fleet/lease lot drivers and crew chiefs employed by the Employer at or out of its facilities located at 20225 Eureka Road and 20911 Gladwin, Taylor, Michigan; but excluding all

pick-up and delivery clerks, fleet/lease clerks, accounting management clerks, quality control employees, temporary employees, guards and supervisors as defined in the Act, and all other employees.

(b) Furnish the Union the information that it requested on January 21, 1997, with the exception of employees' social security numbers, financial information, information on competitors, and information regarding nonunit temporary employees and subcontracting.

(c) Within 14 days after service by the Region, post at its facility in Taylor, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 18, 1997.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 31, 1997

William B. Gould IV,	Chairman
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Sarah M. Fox,	Member
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John E. Higgins, Jr.,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time lot drivers, service truck drivers, condition report writers, check-in employees, sales lineup coordinators, detailers, car washers, buffers, cleaning persons, recon lot drivers, washer/dryer janitors, mechanics, metal technicians, paint technicians, bodyshop clerks, porters, parts clerks, trim technicians, pick-up and delivery drivers, fleet/lease condition report writers, fleet/lease lot drivers and crew chiefs employed by us at or out of our facilities located at 20225 Eureka Road and 20911 Gladwin, Taylor, Michigan; but excluding all pick-up and delivery clerks, fleet/lease clerks, accounting management clerks, quality control employees, temporary employees, guards and supervisors as defined in the Act, and all other employees.

WE WILL furnish the Union the information it requested on January 21, 1997, with the exception of employees' social security numbers, financial information and information on competitors, and information regarding nonunit temporary employees and subcontracting.

DETROIT AUTO AUCTION, INC.